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2 UNITED STATES DISTRICT COURT
3 DISTRICT OF MASSACHUSETTS

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5 IN RE: NEW ENGLAND COMPOUNDING) MDL NO. 13-02419-RWZ
6 PHARMACY CASES LITIGATION)
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16 BEFORE: THE HONORABLE RYA W. ZOBEL AND
17 THE HONORABLE JENNIFER C. BOAL
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22 **STATUS CONFERENCE**
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24
25 John Joseph Moakley United States Courthouse
Courtroom No. 17
One Courthouse Way
Boston, MA 02210

July 28, 2016
2:00 p.m.

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23 (Appearances continue on the next page.)
24
25

1 Appearances (Cont'd):

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1 P R O C E E D I N G S

2 (The following proceedings were held in open court before
3 the Honorable Rya W. Zobel, United States District Court Judge,
4 and the Honorable Jennifer C. Boal, Magistrate Judge, United
5 States District Court, District of Massachusetts, at the John J.
6 Moakley United States Courthouse, One Courthouse Way, Boston,
7 Massachusetts, on July 28, 2016.)

8 JUDGE ZOBEL: Good afternoon. Please be seated.

9 COURTROOM DEPUTY CLERK URSO: This is In Re: New
10 England Compounding, 13-MD-2419.

11 JUDGE ZOBEL: I see some change of personnel.

12 MS. MARTIN: Good afternoon, your Honor. Annika
13 Martin.

14 JUDGE ZOBEL: I thought Ms. Johnson was on vacation.

15 MS. MARTIN: I'm sorry?

16 JUDGE ZOBEL: I thought Ms. Johnson was on vacation.

17 MS. MARTIN: I don't think she is on vacation.

18 JUDGE ZOBEL: She's not?

19 MS. MARTIN: No. I believe she is on --

20 JUDGE ZOBEL: I would have excused her for that, but
21 I'm not sure for something other than this important case.

22 MS. MARTIN: I will endeavor to take you through the
23 agenda today as well as Ms. Johnson does. Annika Martin for
24 the Plaintiffs' Steering Committee.

25 JUDGE ZOBEL: Let me go to the agenda.

1 MS. MARTIN: Sure.

2 JUDGE ZOBEL: The first order on the agenda was oral
3 argument on Specialty Surgery's motion to remand the case. Do
4 I really need to hear argument on that?

5 MS. MARTIN: The Plaintiffs' Steering Committee is
6 willing to waive oral argument on that.

7 MR. TARDIO: Your Honor, Chris Tardio for Specialty
8 Surgery Center.

9 I wanted to make myself available in case the Court
10 had specific factual questions about these cases. I think the
11 briefing covers the factual inquiry that the Court has to
12 make. So, certainly, we're comfortable with the Court making
13 the decision on the briefs.

14 JUDGE ZOBEL: Okay. Nobody wants to be heard?

15 (No response.)

16 JUDGE ZOBEL: I have studied the briefs and I,
17 frankly, do not think that the cases should be remanded and,
18 therefore, the motion to remand is denied as to Specialty
19 Surgery, who is the only defendant that we're dealing with in
20 this regard at the moment. So, now we go to Item B.

21 MS. MARTIN: That's right. And we'll go to No. 1,
22 status of the bankruptcy, and we'll have the report on the
23 bankruptcy.

24 MR. GOTTFRIED: Good afternoon, your Honor. Michael
25 Gottfried for post confirmation officer, Paul Moore.

1 The most important development since the last status
2 conference is that the 2015 tax returns have now been filed
3 for the pharmaceutical entities. We're hopeful that the
4 individual settling defendants' returns, as required under the
5 agreement, will be filed shortly thereafter. And so, we
6 continue to make good progress in that area. Thank you.

7 JUDGE ZOBEL: Thank you. That's it? That's good.

8 MS. MARTIN: I believe --

9 JUDGE ZOBEL: There was also to be a status of the
10 payments?

11 MS. MARTIN: Yes, that's correct. I believe Mr.
12 Sobol should be on the phone.

13 MR. SOBOL: Yes, I am.

14 JUDGE ZOBEL: Can you tell us what the status is,
15 please.

16 MR. SOBOL: Yes. So, the status of payments to the
17 victims is as follows, your Honor:

18 First, the claims administrator, Epic, has done an
19 enormous job and has made decisions in all or virtually all of
20 the claims and as a result, there are approximately 1,199
21 claims of the approximately 1200 claims that there is a final
22 decision on and which, putting aside liens, which I'll turn to
23 in a moment, will be and are ready to be paid their initial
24 payments as soon as possible.

25 So, then there are three groups of healthcare

1 reimbursement obligations: Medicare, Medicaid, and then
2 certain private lienholders. So, I'll address those in turn.

3 First, regarding Medicare, I have good news to
4 report, which is that there is an agreement in principle with
5 CMS and the DOJ on a resolution under which victims who were
6 Medicare eligible have the right to participate or opt out.
7 That agreement is subject to a finalization at the Department
8 of Justice and we understand is working its way up the
9 approval route.

10 I will acknowledge that there has been some
11 frustration and perceived delay on the part of some
12 plaintiffs' lawyers and victims that it's taking the Federal
13 Government too long a period of time for it to approve the --
14 formally approve the Medicare deal.

15 I will report to this Court and to everybody else
16 that I am doing -- and the PSC is doing what it can to push
17 that matter along without making the situation more difficult
18 or worse than it is by some perceived --

19 JUDGE ZOBEL: I'm sorry. I didn't quite understand.
20 What is the agreement with Medicare? What's the nature of the
21 agreement? Are they giving up all of their rights to
22 reimbursement, or what?

23 MR. SOBOL: No, they are not. So, under the
24 agreement --

25 JUDGE ZOBEL: One can hope.

1 MR. SOBOL: Under the agreement, if it is approved by
2 Medicare and if it is approved by this Court, which I'll turn
3 to in a moment, then for some classes -- one class of victims,
4 class of seven victims, Medicare would waive any kind of lien,
5 and then for other classes of victims, Medicare is accepting a
6 significant reduction off of what it normally would be
7 entitled to receive based upon a percentage of what the person
8 is recovering in accordance with the matrix.

9 If it turns out that a participating victim decides
10 that he or she does not wish to participate in this proposed
11 resolution with Medicare, then they can have a private
12 individual one-to-one resolution with Medicare, and under our
13 agreement Medicare has agreed that it will open up and set
14 aside specific resources in order to expedite those individual
15 claims.

16 So, that is the nature of the resolution in broad
17 stroke of Medicare.

18 JUDGE ZOBEL: Now --

19 MR. SOBOL: Let me turn -- sorry.

20 JUDGE ZOBEL: Excuse me one moment.

21 This problem with Medicare and Medicaid and the
22 various agencies around that is a problem that we encounter
23 quite regularly in qui tam cases that settle as well, and one
24 of the things that seems to have done some good is to require
25 the parties, including the governmental agencies, to talk to

1 the Court periodically. If you think that would be helpful,
2 just let us know because we'll set up a telephone conference
3 and sit on them.

4 MR. SOBOL: I think that would helpful, your Honor.
5 I think that it would be timely if the Court were to issue
6 some kind of an order or a request and we do that by the first
7 or the second week in August, because I think that if you hit
8 that time period and we don't have formal sign-off by the
9 Department of Justice, then it would be ripe at that point.
10 So, I would, frankly, encourage the Court to do that if you
11 were so inclined.

12 JUDGE ZOBEL: The government is not a party to this
13 case, is it, in any way?

14 MR. SOBOL: It is not. It is not.

15 JUDGE ZOBEL: So, I think the way to do it is for us
16 to schedule a status conference pertaining to this issue and
17 request the -- it's not DOJ. HHS, isn't it?

18 MR. SOBOL: Well, it's both DOJ and HHS, yes, your
19 Honor.

20 JUDGE ZOBEL: One of the alphabet agencies to
21 participate in a telephone conference concerning the
22 agreement, or whatever.

23 MR. SOBOL: That would be very helpful, your Honor,
24 and if I can augment that suggestion, your Honor, let me make
25 this suggestion as well. So, under the agreement, the

1 agreement also contemplates that the Court approves the
2 agreement.

3 Now, in the ordinary course of events, I would as a
4 matter -- typically await the final formal approval by the
5 Department of Justice of the agreement before I would file a
6 motion with this Court and submit the agreement to this Court.

7 However, I'm mindful of everyone's desire to move
8 this forward with all human speed and, accordingly, my
9 intention was to early next week, on Monday or Tuesday, file
10 that motion with you, attach the proposed agreement with the
11 understanding, of course, that the -- HHS and DOJ have not
12 finally agreed to that and schedule some kind of a hearing
13 before you, your Honor.

14 So, if we combine your status conference with also
15 that hearing, where you might have any questions regarding the
16 operation of the agreement, we might be able to kill two birds
17 with one stone.

18 JUDGE ZOBEL: Well, since you're filing a motion and
19 we're going to have some kind of discussion about this
20 motion -- normally we wouldn't need, but we will have it --
21 then we will invite the -- what agency is it, HEW?

22 MR. SOBOL: Well, here it would be -- it's HHS and
23 CMS, but it's also a DOJ component, and I think that the
24 lawyers --

25 JUDGE ZOBEL: We'll invite them all. We'll invite

1 them all to come and participate.

2 Now, I have no problem in doing this on the
3 telephone, and maybe you could lay the groundwork for it and
4 say that I wish the governmental agencies to participate in
5 the hearing on this motion.

6 MR. SOBOL: I will do that, your Honor.

7 JUDGE ZOBEL: And Ms. Urso can give you a date, and
8 we can tell them that we are happy to do it by telephone or
9 they can all schlep up here and we'll see them, okay?

10 MR. SOBOL: Very good. I will see what their
11 preference is in that regard. Thank you.

12 JUDGE ZOBEL: So, I will rely on you to set it up.

13 MR. SOBOL: I will do that.

14 JUDGE ZOBEL: About when would you want this?

15 MR. SOBOL: I think -- what is the second Monday in
16 August? Is it the 15th?

17 JUDGE ZOBEL: Would probably be a Tuesday.

18 MR. SOBOL: Yes, the 16th of August would be great.

19 JUDGE ZOBEL: What time, Lisa?

20 COURTROOM DEPUTY CLERK URSO: 2 o'clock.

21 JUDGE ZOBEL: 2 o'clock would work for you?

22 MR. SOBOL: Thank you.

23 JUDGE ZOBEL: Okay, that's when we'll do it. So,
24 we'll set it down for a hearing on a motion that you're going
25 to file.

1 MR. SOBOL: Yes.

2 JUDGE ZOBEL: Thank you very much.

3 Now, is there another component to this?

4 MR. SOBOL: Yes. So, then I have to turn to Medicaid
5 and then I turn to the private insurers. Okay, your Honor?

6 JUDGE ZOBEL: Does Medicaid need some prodding, too?

7 MR. SOBOL: I don't think so, but I want to visit
8 that with somebody, have a discussion momentarily, and if
9 there's some reason that that needs to be included in this, I
10 will add that to the request for the 16th of August.

11 JUDGE ZOBEL: Okay.

12 MR. SOBOL: So, there are, of course, many Medicaid
13 agencies and, of course, many of those Medicaid agencies don't
14 have any dogs in this hunt because this was a catastrophe that
15 was not as widespread as other situations, although still a
16 travesty. So, there are some Medicaid agencies that
17 potentially have a bigger dog in this hunt than others, but I
18 have some news to report there as well.

19 Oh, and, of course, one of the things that we have to
20 do is make sure, to the extent that we can, that, though,
21 Medicaid agency that does have a lien is going to say that
22 moneys were paid over to a Medicaid beneficiary without their
23 knowing it.

24 So, the PSC has retained the Garretson Group, which
25 is a well-known lien resolution firm, to work with and speak

1 with Medicaid agencies in order to make sure that we have
2 information back from them so that we in turn can give
3 assurances to the tort trustee that payments will be made out
4 for victims from that state without a concern about Medicaid
5 lien.

6 I have good news to report, which is that although
7 this process typically takes a longer period of time, at our
8 request the Garretson Group did what it could to expedite the
9 responses from Medicaid from several of the key critical
10 states and they've already been able to get responses from two
11 of the three critical states and they are working on others,
12 such that we know that we have responses back from some of the
13 more critical agencies.

14 I need, though, to touch base with the Garretson
15 Group tomorrow -- on either Friday or on Monday to find out
16 exactly where we are in order to determine whether or not we
17 need any court discussion with respect to that as well, and I
18 will do so.

19 JUDGE ZOBEL: Thank you.

20 MR. SOBOL: And then, finally, there are also
21 agreements in principle with the two groups of private
22 insurers and those agreements are also in the process of being
23 finalized.

24 The net result of all of this is that for some of
25 those claims that have been allowed -- that half of the claims

1 that have been allowed, that we will be sending notices out,
2 hopefully, to as many of those persons whose claims have been
3 allowed in August, such that they can get back to us,
4 confirming that they have no other lien issues that the tort
5 trustee need to be concerned about, such that payments will
6 start happening in August.

7 I keep on saying that like it's both a fact. It also
8 needs to be said that this is a matter of will, too. We are
9 pushing on many different groups to make sure that we can keep
10 on that track. And so, that is where we are.

11 And to the extent that we can't get the first checks
12 out to some approved people in August, then we are going to be
13 doing that as soon as we absolutely can thereafter in
14 September, and continue going forward on a rolling basis.

15 So, that's where we are with all of those matters,
16 your Honor.

17 JUDGE ZOBEL: Thank you very much. That really is a
18 very good report.

19 Let me ask you. I've forgotten really where in the
20 sequence a claimant or a plaintiff can appeal the decision as
21 to the amount. Does that come after you tell them -- after
22 you pay off some of it or --

23 MR. SOBOL: No. That's a process that's already been
24 underway, and if Mr. Ellis is the courtroom, I think that he
25 is our guru on all those matters and probably the best to

1 address it.

2 MR. ELLIS: Yes, Judge. After some --

3 JUDGE ZOBEL: I think you need to turn your
4 microphone on. There's a button behind the back end.

5 MR. ELLIS: Yes. After somebody receives a denial,
6 they have a 30-day period to file an appeal. Those are
7 beginning to be filed.

8 JUDGE ZOBEL: Really?

9 MR. ELLIS: Yes. We don't expect too many of them.

10 JUDGE ZOBEL: Okay. All right.

11 MS. MARTIN: Your Honor, if I could just pick up on
12 one of the things that Mr. Sobol said. He mentioned reaching
13 out for data from the state Medicaid agencies to see if the
14 claimants are Medicare eligible and if they have potential
15 claim for reimbursements from Medicaid, and some -- as Mr.
16 Sobol said, some of the agencies have turned over information,
17 but some Medicaid agencies are reluctant to share the
18 information without a qualified protective order saying that
19 sharing information does not violate HIPAA.

20 So, we have filed a motion for a qualified protective
21 order and a proposed order, and we have them also here to hand
22 up. I believe it's set up for Judge Boal's signature, but we
23 would ask that the Court enter this order. There's no
24 opposition to it. It's similar to what we did earlier this
25 year with the private third-party payors, and as soon as we

1 get this order entered, then we can assuage the concerns of
2 those Medicaid agencies that have been reluctant to share the
3 information and they can get that information to the tort
4 trustee, and that won't be holding things up.

5 So, we have an order to hand up, if your Honors would
6 like. It was Docket No. 3005 and it was, I believe, filed
7 yesterday. We had filed a previous version ten days ago, but
8 this modified one is the correct one. It reflects some
9 language that we agreed to with the defendants. So --

10 MR. GASTEL: May I approach, your Honor?

11 JUDGE ZOBEL: Of course.

12 (Attorney Gastel hands document to the Court.)

13 MS. MARTIN: I believe what you have there is both
14 the motion and the proposed order put together.

15 JUDGE ZOBEL: Thank you. Judge Boal will take care
16 of it.

17 JUDGE BOAL: I had been waiting for the two-week
18 period, but in some ways started a new two-week period, but my
19 understanding, if I heard you correctly, is you don't believe
20 there's opposition.

21 MS. MARTIN: We do not. We made some modifications
22 after discussion with the defendants to -- and, basically, the
23 issue is that the defendants -- I believe that they are
24 entitled to receive information that is disclosed. We don't
25 think it's discoverable, but we put language into the proposed

1 order that says that we will inform the defendants of the
2 nature of the information that is received and if they still
3 think that they are eligible to see it, then we can brief that
4 then, but we didn't want to have that issue hold up entry of
5 the order for payments.

6 JUDGE ZOBEL: Thank you.

7 MS. MARTIN: So, that brings us to the status of the
8 insurance declaratory judgment action, and Mr. Gastel will do
9 that.

10 MR. GASTEL: I believe the last time we were here,
11 your Honor, the certification order had just entered. The
12 insurer and Specialty Surgery Center had submitted their
13 opening brief. Our reply brief is due, I believe, on Monday,
14 and then I believe that we will wait an order from the
15 Tennessee Supreme Court as to whether or not they accept the
16 question. They continue to have the right to reject the
17 question, but they ask that we brief it fully first. So that
18 the briefing should be completed on Monday, and at that point
19 we will be waiting to hear from the Supreme Court.

20 JUDGE ZOBEL: Thank you.

21 MS. MARTIN: So, that brings us to the status of
22 discovery. I just want to go out of order for a moment.

23 Mr. Kirby wanted to address something for Box Hill
24 and wanted to be able to actually make his transportation out
25 of here.

1 MR. KIRBY: Good morning, your Honors -- or
2 afternoon, I guess, at this point.

3 This I think was probably more for Judge Boal, but it
4 doesn't matter to me who addresses it. I'm just the messenger
5 on behalf of both the plaintiffs and the defendants.

6 I know the last month or the month before, Judge
7 Boal, you entered an amended scheduling order with different
8 dates, I think on the back end dealing mostly with case-
9 specific discovery. We had an August 1st deadline of common
10 issue fact discovery. Both sides have worked diligently to
11 satisfy that in the last few months.

12 However, despite working hard, there's still several
13 depositions due to exigent circumstances outside of our
14 control that hadn't been accomplished and a couple of them --
15 I'll give you the details. Barbara Wagner and Kim Brockmeyer,
16 they're nonparty witnesses. Judge Boal, you had a hearing on
17 that. There was a protective order filed by counsel for the
18 nonparty witnesses. You allowed those depositions to go
19 forward with some restrictions, at least -- I think you just
20 dealt with Barbara Wagner, but it would also apply to Kim
21 Brockmeyer.

22 Those depositions are scheduled to go forward, at
23 least by agreement of counsel, in mid August. The dates have
24 already been agreed to by both sides. And then the Department
25 of Health and Mental Hygiene, one of the state agencies that

1 had addressed this, their deposition was noticed along with
2 some document production was requested back in March. There
3 were issues with the documents, some questions about
4 sensitivity of the information. We just got those documents
5 last week -- or, actually, earlier this week. The deposition
6 is at least scheduled by agreement of counsel for August the
7 9th.

8 And then we have the Board of Pharmacy, the Maryland
9 Board of Pharmacy, similar situation, but that deposition was
10 actually started this past Tuesday, the 26th, and,
11 unfortunately, a little less than halfway through the
12 deposition, the witness, unbeknownst to either counsel or her
13 own counsel, had some child care issues and had to leave
14 halfway through. And so, both sides agreed to suspend that
15 and continue it later. Although due to some vacation
16 schedules, that can't be accomplished in the next two days or
17 in the very beginning of August. So, we're working on getting
18 a new date for that, hopefully, in the last couple of weeks of
19 August, but both sides are okay with this, but I know that we
20 can't agree to do anything. We need the Court's approval,
21 which is why I'm coming to you. I didn't file anything. I'm
22 happy to file a motion, a joint motion to extend it if you
23 would like, but I figured I would bring it up today.

24 JUDGE BOAL: So, the next deadline is September after
25 the close of common issue fact discovery.

1 MR. KIRBY: It wouldn't affect any of those other
2 deadlines.

3 JUDGE BOAL: The next deadline, actually, is the
4 plaintiffs' common issue expert.

5 MR. KIRBY: Correct.

6 JUDGE BOAL: So, is there anyone here from the
7 plaintiffs in that case?

8 MR. KIRBY: The local plaintiff's counsel are the
9 only ones who have done anything in this case in these
10 proceedings. So, I don't know if they're on the phone or not.
11 It would be Patty Kasputys or Michael Coren. I can file
12 something and get them to sign it if you want to confirm.

13 JUDGE BOAL: I will approve it as long as it doesn't
14 affect the September 1st date, that the parties operate under
15 that understanding.

16 MR. KIRBY: Okay.

17 JUDGE BOAL: So, you don't need to file another
18 motion.

19 MR. KIRBY: Okay. Thank you, your Honor.

20 MS. MARTIN: So, that brings us to the Sub (a) under
21 the status of discovery. We have the Court rulings update. I
22 don't believe that there is any discussion that needs to
23 happen regarding the three orders that are here.

24 So, I think we can move to the litigation track, and
25 I also don't believe that there are any comments concerning

1 (a), the stipulation of dismissal, or the Court rulings
2 update, which is (b).

3 So, that brings us to (c), which is responses to show
4 cause regarding the remand and transfer, and this -- the list
5 that we have here is not complete. This was just intended to
6 be a list of what had been filed since the last status
7 conference, but it also is missing a few --

8 JUDGE ZOBEL: Which list are you talking about?

9 MS. MARTIN: I'm sorry. Under No. 4, status of
10 litigation track, and then (c), responses --

11 THE COURT: The little i's.

12 MS. MARTIN: Sorry?

13 JUDGE ZOBEL: Little i, ii, iii --

14 MS. MARTIN: Yes, the Romans there.

15 So, this was intended to be sort of a list of what
16 had been filed since the last status conference, but it does
17 not include everything that was filed since the last status
18 conference. So, I wouldn't rely on this list to be a complete
19 list of the responses to show cause -- to show cause order,
20 but that aside, there's not really an action for the Court to
21 take here. At the last status conference --

22 JUDGE ZOBEL: Let me ask you. I've looked at a
23 number of the filings. I'm not sure I caught them all, but,
24 as I understand it, there was an order for the parties to let
25 us know and the parties, more or less, did.

1 And then there were a number -- there was the
2 order -- the proposed corrected order that has a list of cases
3 to be transferred subject to objection by the plaintiffs, as I
4 understood it, and the plaintiffs have, in fact, filed
5 objection as to some of them.

6 MS. MARTIN: Right.

7 JUDGE ZOBEL: So, those are now ripe to decide, are
8 they not?

9 MS. MARTIN: So, at the last status conference, it
10 was discussed that the PSC would be consulting with the
11 counsel in those cases.

12 JUDGE ZOBEL: Yes. That hasn't happened?

13 MS. MARTIN: It has been happening, but it is not
14 complete. And so --

15 JUDGE ZOBEL: So, I shouldn't rule on them yet?

16 MS. MARTIN: Right. It will be complete certainly
17 before the next status conference, but it is underway, just
18 has not -- not been able to connect with all the counsel that
19 you need to discuss with.

20 JUDGE ZOBEL: There are not a whole lot of cases that
21 are involved in this dispute, are there? I mean, maybe there
22 are six or seven or eight, at most?

23 MS. MARTIN: I believe that's correct.

24 JUDGE ZOBEL: Okay.

25 MS. MARTIN: But we were still reaching out to them

1 to try to see if we could discuss the issues of timing with
2 them and come to the Court with an answer to the questions
3 that were posed at the last status conference.

4 JUDGE ZOBEL: And is it the view of counsel that we
5 should not remand any of them until we have resolved this
6 issue as to the contested ones?

7 MS. MARTIN: Should not remand any of those that are
8 contested or any of them at all?

9 JUDGE ZOBEL: Any of them at all. There are a number
10 that are not contested, as best as I can tell.

11 MS. MARTIN: That is not our position. Those are
12 separate and, as the Court may recall, we are -- we had
13 offered to prepare a proposed suggestion of remand for those
14 that are not contested, and we have been working on that and
15 intend to have that prepared to file by the end of next week.

16 JUDGE ZOBEL: Okay.

17 MS. MARTIN: So, this is just concerning --

18 JUDGE ZOBEL: So, by the end of next week the
19 uncontested remands will be ready to go?

20 MS. MARTIN: Yes, we will have a proposed
21 suggestion --

22 JUDGE ZOBEL: In the meantime, you're also trying to
23 work out the contested pieces of it, which either will go
24 uncontested in the end or will go per order of the Court if
25 the Court sends them back.

1 MS. MARTIN: Yes, I believe that's correct.

2 JUDGE ZOBEL: And your response, you having worked
3 out with defense counsel, will be done by sometime in a week
4 or so?

5 MS. MARTIN: I'm not sure if I can promise that,
6 but --

7 JUDGE ZOBEL: Sometime before the next --

8 MS. MARTIN: -- definitely before the next status
9 conference, yes.

10 JUDGE ZOBEL: By the next meeting?

11 MS. MARTIN: Yes, absolutely.

12 JUDGE ZOBEL: So, the only thing for you to do now is
13 if you want the uncontested ones to go, you will give me the
14 appropriate documents to accomplish that.

15 MS. MARTIN: Yes.

16 JUDGE ZOBEL: And, otherwise, for the others we will
17 wait, and it may be that it makes sense to send the entire
18 group together, in which case you will do that also by the
19 next meeting.

20 MS. MARTIN: Right. We have been working on the
21 proposed suggestion for remand and we have a chart -- we
22 actually have the chart that lists all the cases that are
23 going to be -- that are uncontested or there are no objections
24 to remand, and we have a list of those, if you would like to
25 see it. We were going to attach it to our proposed suggestion

1 of remand, but we do have it here today, if you wanted to see
2 it. It's now up to about 70 cases, where at the previous
3 conference was 17 individual cases.

4 JUDGE ZOBEL: Well, you had given me the chart, which
5 was -- no.

6 MS. MARTIN: We have an updated version of that
7 chart.

8 JUDGE ZOBEL: I don't know how you keep track of all
9 of this. Was it -- here it is. It's 2946 --

10 MS. MARTIN: I believe that's right.

11 JUDGE ZOBEL: -- which is a chart which also notes
12 certain objections.

13 MS. MARTIN: Right. We have an updated version of
14 that chart -- or, actually, this chart that we have is not the
15 one you're talking about. You have the one that notes the
16 objections. The chart that I have here is one that would be
17 just those that had no objection that we were going to attach
18 with our suggestion of remand.

19 JUDGE ZOBEL: Well, the one that I just showed you is
20 a chart that has no commentary, presumably no objection, and
21 then there's a note of objection.

22 MS. MARTIN: Right.

23 JUDGE ZOBEL: So, it could serve as a template for
24 those that can go immediately.

25 MS. MARTIN: It could, yes.

1 JUDGE ZOBEL: But I leave it to you to decide how you
2 want to handle it.

3 MS. MARTIN: Okay.

4 JUDGE ZOBEL: But it would be nice to get it done by
5 the next meeting.

6 MS. MARTIN: Yes, by the next meeting, both the
7 conversations with individual counsel and the proposed
8 suggestion for remand filing will be done.

9 JUDGE ZOBEL: Okay.

10 MS. MARTIN: So, that brings us to the report from
11 pro se liaison, which is me, and there is no report. There
12 have been no communications from any pro se individuals since
13 the last status conference.

14 JUDGE ZOBEL: Now, did you know when you became
15 liaison counsel that you were -- pro se liaison, that you
16 would be running the show?

17 MS. MARTIN: I could only hope.

18 So, that brings us to the schedule for future status
19 conferences. I believe on the docket they are only docketed
20 for Judge Boal and not for Judge Zobel. So, I just wanted
21 to --

22 JUDGE ZOBEL: Well, I'm not sure that's right,
23 because I noted on my agenda for June that we were having a
24 meeting on August 24th and September 29th, although here it
25 said Boal only. I'm happy to turn it over to her.

1 MS. MARTIN: I just wanted to confirm that 2:00 p.m.
2 would be the time for the status conference on those dates.

3 JUDGE BOAL: It's just a question they haven't been
4 docketed?

5 MS. MARTIN: Yes.

6 JUDGE ZOBEL: So, it is both of us.

7 MR. KIRBY: Your Honor?

8 JUDGE ZOBEL: Yes.

9 MR. KIRBY: Can I raise an issue? I hate to do it.
10 It's all my mistake, but when we agreed I think to September
11 29th, I was --

12 JUDGE ZOBEL: What day would you like?

13 MR. KIRBY: What day would I like instead of
14 September 29th? September 28th, I think, would work.

15 JUDGE ZOBEL: That's fine. Let's find out what
16 counsel's preference is. September 28th is a Wednesday.
17 Lisa, does that work?

18 COURTROOM DEPUTY CLERK URSO: Yes. We have a
19 revocation that I can change.

20 JUDGE ZOBEL: Is September 28th agreeable to all
21 counsel?

22 MS. MARTIN: Yes.

23 JUDGE ZOBEL: So, we'll move the 29th to the 28th.

24 MR. KIRBY: Thank you, your Honor. Can't believe I'm
25 two for two today.

1 JUDGE BOAL: Well, I, unfortunately, did not bring my
2 calendar with me for September. So, I'll just coordinate.
3 Hopefully, I'll be able to make it work.

4 MR. KIRBY: Thank you very much.

5 JUDGE ZOBEL: Okay.

6 MS. MARTIN: Then we have some fully-briefed motions
7 that are before the Court.

8 JUDGE ZOBEL: Oh, yes. I think we normally go three
9 months ahead. So, do you want me to schedule something in
10 October, too?

11 MS. MARTIN: Yes.

12 JUDGE ZOBEL: Thank you.

13 What day in October would you like, Mr. Kirby?

14 MR. KIRBY: What week are you looking at?

15 JUDGE ZOBEL: Of course, if you choose it, you can't
16 change it.

17 MR. KIRBY: I'm pretty flexible other than the 19th.

18 COURTROOM DEPUTY CLERK URSO: What about -- so, the
19 week before or the week after? Because you have the...

20 (Discussion off the record at the Bench.)

21 JUDGE ZOBEL: We can do it either on the 13th or the
22 27th.

23 MR. KIRBY: That's the only other date that doesn't
24 work.

25 JUDGE ZOBEL: Really?

1 MR. KIRBY: I was looking -- I was going to say
2 something, but I thought, no, there's no chance she's going to
3 pick the one date.

4 COURTROOM DEPUTY CLERK URSO: What about the 13th, at
5 2:00?

6 JUDGE ZOBEL: The week that you had suggested is the
7 circuit conference week.

8 MR. KIRBY: I can do the 12th.

9 COURTROOM DEPUTY CLERK URSO: We have stuff on that
10 date.

11 MR. KIRBY: Or the 11th.

12 JUDGE ZOBEL: Does that work for you?

13 (Discussion off the record at the Bench.)

14 JUDGE ZOBEL: The 11th works for us.

15 MR. KRAUSE: Your Honor, does it make sense to have
16 it on the 28th of September and another --

17 JUDGE ZOBEL: I'm sorry?

18 MR. KRAUSE: Does it make sense to have it on the
19 28th of September and then two weeks later --

20 JUDGE ZOBEL: Do you want to skip October?

21 MR. KIRBY: I'm happy to do it on the 28th. I mean,
22 I've got 25, 26 and 27 all free, whatever works with everyone
23 else.

24 MS. MARTIN: 25th would work for us.

25 MR. KIRBY: Actually, not the 25th. 26th and 27th.

1 MS. MARTIN: Those don't work for us.

2 JUDGE ZOBEL: Ms. Martin and Mr. Kirby, get together
3 and tell us what date you want before we leave here today.

4 MR. KIRBY: I could make the 25th work, if that works
5 for everyone. Does that work for you?

6 MS. MARTIN: The 25th works for us.

7 JUDGE ZOBEL: 25th, does that work for you?

8 JUDGE BOAL: No.

9 MR. KIRBY: Does the 18th work for you? Is that
10 whole week out?

11 JUDGE ZOBEL: No. That's the circuit conference in
12 Puerto Rico.

13 MR. KIRBY: Can we come, too?

14 MS. MARTIN: We can do it there.

15 JUDGE BOAL: So, Wednesday works, the 26th.

16 JUDGE ZOBEL: 26th?

17 MS. MARTIN: That doesn't work for our side.

18 JUDGE ZOBEL: Does not work?

19 JUDGE BOAL: 27th --

20 MS. MARTIN: Does not work for us.

21 MR. CHALOS: 26th and 27th do not work for us.

22 JUDGE ZOBEL: This is the first time we've had that
23 kind of --

24 MS. MARTIN: The 28th could work for us.

25 JUDGE ZOBEL: I'm sorry?

1 COURTROOM DEPUTY CLERK URSO: The 28th of October
2 doesn't work for us.

3 MR. KIRBY: If you just send us back to Maryland, you
4 won't have to worry about the schedule.

5 JUDGE ZOBEL: Then I'd have to go down there,
6 wouldn't I?

7 MR. KIRBY: It's nice in Maryland.

8 MR. CHALOS: How about the 24th?

9 MS. MARTIN: The 24th would also work.

10 COURTROOM DEPUTY CLERK URSO: No, not for us.

11 MS. MARTIN: Does the 28th work or no?

12 COURTROOM DEPUTY CLERK URSO: No.

13 JUDGE ZOBEL: 25th, 26th or 27th does not work for --

14 MS. MARTIN: 25th works for us, but not the 26th or
15 27th.

16 MR. KIRBY: I'm good for all those dates, 25th, 26th,
17 and 27th, but I think Judge Boal has...

18 (Discussion off the record.)

19 JUDGE ZOBEL: How about 26th?

20 MR. KIRBY: For me, but not for the plaintiffs
21 apparently.

22 JUDGE ZOBEL: How about 27th?

23 MS. MARTIN: No, we can't do that either.

24 COURTROOM DEPUTY CLERK URSO: What about the first
25 week of November?

1 MS. MARTIN: We could do that.

2 COURTROOM DEPUTY CLERK URSO: What about the 3rd?

3 MR. KIRBY: Works for me.

4 MS. MARTIN: That works for us as well.

5 JUDGE ZOBEL: November 3rd?

6 MS. MARTIN: Yes.

7 JUDGE BOAL: I did not bring my calendar.

8 COURTROOM DEPUTY CLERK URSO: I have hearings on, but
9 I could just move them, if that worked for everybody.

10 JUDGE ZOBEL: November 3rd?

11 JUDGE BOAL: Why don't we just schedule it.

12 COURTROOM DEPUTY CLERK URSO: Does the 3rd work for
13 everyone, at 2:00?

14 MR. KIRBY: Yes.

15 MS. MARTIN: Yes.

16 COURTROOM DEPUTY CLERK URSO: Okay. So, 11/3, at
17 2:00.

18 JUDGE ZOBEL: Effectively skipping a month. We have
19 two, correct?

20 COURTROOM DEPUTY CLERK URSO: Yes, Judge.

21 JUDGE ZOBEL: Okay. Now, with respect to the
22 discovery-related motions, again, Judge Boal.

23 MS. MARTIN: Right. So, the first motion there is a
24 motion to modify the protective order. There were litigants
25 in state court who wanted access to and the ability to use

1 information that's in the repository. So, the language of the
2 protective order needs to be tweaked to allow them to sing on
3 to the protective order. So that was the gist of this motion.
4 I don't believe that we expect any opposition to this motion.

5 JUDGE BOAL: I think the deadline for opposition is
6 Monday. So, I was just waiting for that.

7 MS. MARTIN: Okay. And then Mr. Gastel will address
8 the (B) and (C).

9 MR. GASTEL: (B) and (C) are fully briefed and I
10 believe have been argued, your Honor.

11 The issue is -- you might have seen just prior to the
12 status conference, we filed a joint motion to adjust the --
13 and update the current scheduling order for the Specialty
14 Surgery cases, which I think is Docket No. 2652. Our joint
15 motion is Docket No. 3010. We have largely come to an
16 agreement on the schedule. There are three issues related,
17 that we have not come to an agreement to. We would ask that
18 the Court resolve those issues, and we would ask the Court to
19 update the current schedule with one of the proposals that's
20 before the Court.

21 JUDGE BOAL: So, I anticipate issuing a decision on
22 (B) and (C) shortly, maybe even today, but I wasn't sure,
23 given the schedule that was filed an hour or so ago.

24 How long -- under either way I decide the motion, the
25 parties are going to need to do some work. And was that

1 factored in to the request for the extension of fact
2 discovery?

3 MR. GASTEL: I think that the parties were working
4 under the assumption that your order would be forthcoming
5 relatively quickly, and I think the dates will hold if you
6 were going to rule that quickly.

7 JUDGE BOAL: No matter how many levels of review,
8 depending on the order that I issue.

9 MR. GASTEL: We generally believe that we've
10 accommodated the --

11 JUDGE BOAL: Okay.

12 MR. TARDIO: Part of it, of course, will depend on
13 how long it takes Cumberland Medical Center to produce and
14 have the vendor process the data, but we did build in extra
15 time for review of that information by the lawyers.

16 JUDGE BOAL: I think, if I remember correctly, you
17 guys were 75 days, but about how long do you think this review
18 will take?

19 MR. TARDIO: Well, I suppose it depends, in part, on
20 the orders, but probably at least 30 days, and then there are
21 some depositions that follow it that the Court has allowed.

22 JUDGE BOAL: All right. Thank you.

23 MS. MARTIN: So, No. 2 under the fully-briefed
24 motions and the dispositive motions, the proposed suggestion
25 of remand, we've discussed that earlier. So --

1 JUDGE ZOBEL: So, that we just spoke of earlier
2 about --

3 MS. MARTIN: Exactly.

4 JUDGE ZOBEL: I gather that I will hear from you
5 shortly before the next meeting.

6 MS. MARTIN: Yes. By the end of next week we will
7 have proposed suggestion for remand.

8 So, that brings us to (D), briefing in progress.
9 We've already covered the two discovery-related motions. The
10 first one we handed up to Judge Boal earlier, and then the
11 second one is what Mr. Kirby discussed earlier.

12 In the other motion section, the letter request is
13 covered by the proposed suggestion of remand. So, we'll pass
14 that.

15 And then in dispositive motions, there is Specialty
16 Surgery's motion for summary judgment --

17 JUDGE ZOBEL: Is that ripe?

18 MS. MARTIN: Not yet. Specialty Surgery Center's
19 reply is due on August 3rd, which I believe is Wednesday. And
20 so, once that reply has been filed, then it will be ripe.

21 JUDGE ZOBEL: Okay. What date is that?

22 MS. MARTIN: August 3rd.

23 JUDGE ZOBEL: Okay.

24 MS. MARTIN: And so, then the last section is the
25 motions that are stayed as a result of Docket 2898. These are

1 all the Saint Thomas-related motions. So, we need to discuss
2 them. Mr. Chalos will give you an update.

3 MR. CHALOS: Yes, your Honor. Mark Chalos for the
4 Plaintiffs' Steering Committee. I wanted to update the Court
5 on the progress of the Saint Thomas cases.

6 We now have a signed memorandum of understanding
7 between all the parties in those cases. We are continuing now
8 the process of developing individual releases, which will be
9 presented to our clients, and we are also waiting resolution
10 of that lien issue, which will, obviously, impact -- or at
11 least potentially impact these cases as well, but in the
12 meantime, we're continuing to work toward getting those
13 individual releases to our clients, having an allocation plan
14 put into place for the settlement and, hopefully, by then the
15 lien issue will resolve itself and we can complete that
16 settlement.

17 JUDGE ZOBEL: Well, that sounds good. What's the
18 outside date that you anticipate you will be done?

19 MR. CHALOS: Well, that's a good question. I don't
20 know the answer to that. We are moving as quickly as we can.
21 We are mindful that we have the 90-day stay on those cases,
22 and as for now, we're working to at least have the individual
23 releases completed within that 90-day period, and we'll update
24 the Court. If we need some action from the Court, we'll ask
25 for it.

1 JUDGE ZOBEL: Unfortunately, it won't move the
2 government any faster, will it?

3 MR. CHALOS: It doesn't seem to be, but we remain
4 hopeful.

5 JUDGE ZOBEL: Okay.

6 MS. MARTIN: So, unless your Honors have any other --

7 JUDGE ZOBEL: The rest of this is really all by way
8 of reporting?

9 MS. MARTIN: Yes. Correct.

10 So, unless there's anything else your Honors have,
11 then that is it for today.

12 JUDGE ZOBEL: And all of the matters on the last page
13 are also for information only?

14 MS. MARTIN: Yes. All of these are motions that are
15 stayed currently.

16 JUDGE ZOBEL: Is there anything else that anybody
17 wishes to discuss, either counsel in the courtroom or counsel
18 on the phone?

19 (No response.)

20 JUDGE ZOBEL: Well, thank you very much.

21 MS. MARTIN: Thank you, your Honor.

22 JUDGE ZOBEL: We will see you again come August.

23 Have a safe trip back.

24 (Adjourned, 2:45 p.m.)

25

C E R T I F I C A T E

I, Catherine A. Handel, Official Court Reporter of the United States District Court, do hereby certify that the foregoing transcript, from Page 1 to Page 37, constitutes to the best of my skill and ability a true and accurate transcription of my stenotype notes taken in the matter of No. 13-md-2419-RWZ, In Re: New England Compounding Pharmacy, Inc., Products Liability Litigation.

August 14, 2016
Date

/s/Catherine A. Handel
Catherine A. Handel RPR-CM, CRR